

## Global: The Hague Judgments Convention appears on the horizon.

*On 2 July 2019, the Hague Conference on Private International Law (“HCCH”) concluded the final text of its latest instrument in the field of international judicial co-operation; the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (the “Judgments Convention”). In this briefing we take a short look at what this may mean for the future of international commercial litigation.*

### Background – what is the Judgments Convention?

The product of around 8 years of work at the HCCH (which is a global inter-governmental organisation set up to work for the "progressive unification" of rules of private international law), the Judgments Convention is an instrument which seeks to facilitate cross-border litigation by the establishment of a recognition and enforcement regime for court judgments amongst states who become party to it (known as “**Contracting States**”). Its finalisation does not mean that it has entered into force or otherwise has any legal effect. Instead, the significance is that there is now a final text which states can choose to ratify/accept in future should they so wish. Shortly after the text’s finalisation, Uruguay became the first state to sign the Judgments Convention (note that *signature* is an act which is simply an *indication* of an intent to formally ratify/accept the Judgments Convention in future, it does not mean that the signing state has become a Contracting State, nor is formally set to become one).

### A quick tour of the Judgments Convention

The core mechanic of the Judgments Convention is its list of “bases” for recognition and enforcement (which essentially amount to a number of grounds of jurisdiction). If any one of these is met, then a judgment from the Contracting State of origin will become eligible for recognition and enforcement, under the Judgments Convention’s regime, in any other Contracting State.

Against that background, what follows is a brief outline of its key provisions.

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**Scope:** The Judgments Convention will apply to civil or commercial matters generally. A number of such matters are, however, excluded from its scope. For example, insolvency, defamation/privacy, intellectual property and arbitration. A “judgment” for the purposes of the Judgments Convention means any decision on the merits by a court – it does not include interim measures.

### **Recognition and Enforcement:**

- > **Bases:** The list of “bases” is long and contains grounds which, broadly speaking, establish a connection between the defendant and the Contracting State of origin (e.g. defendant was habitually resident there) or a connection between the claim and the Contracting State of origin (e.g. place of performance of a contract). Although the availability of *some* of the bases are tied to the nature of the claim in issue, there is no absolute requirement that a claim be, for example, contractual (rather than non-contractual) and, in that sense, the Judgments Convention is holistic in nature.

Notably, one of the bases is the existence of a choice of court agreement in favour of a court of the Contracting State of origin *other than* an exclusive choice of court agreement. For the purposes of the Judgments Convention, the term “exclusive choice of court agreement” carries a specific meaning derived from the 2005 Hague Choice of Court Convention – namely an agreement that designates the courts of *one* state or one or more specific courts of *one* state to the exclusion of the jurisdiction of any other courts. So, in short, this means that all forms of jurisdiction clause incorporating any degree of *non-exclusivity* could potentially fall within the scope of the Judgments Convention. The reason for this feature is that cases concerning exclusive choice of court agreements can be catered for by the Choice of Court Convention. That Convention provides for a similar regime in cases where an exclusive choice of court agreement has been used (although there are many other respects in which its operation differs from the Judgments Convention, so do not assume that the detailed workings of the instruments are generally the same; for example, the Choice of Court Convention only has business-to-business relationships within its scope and it also contains positive rules to mandate the *jurisdictional effect* to be given to jurisdiction clauses to which it applies). Whether the Choice of Court Convention applies in any given case will, however, of course also depend upon whether any relevant states (including that whose courts have been chosen) are party to it and, finally, although the Judgments and Choice of Court Conventions are, in a broad sense, complementary, there is no obligation on states to sign up to one instrument as a consequence of being a party to the other.

- > **General regime:** The Judgment Convention's recognition and enforcement regime requires recognition and enforcement in any Contracting State without a review of the merits of the case. There are, however, certain grounds (broadly familiar from other international law instruments relating to the recognition of judgments or arbitral awards) upon which this can be refused. In summary, these cover matters such as lack of adequate notice to the defendant, judgments obtained by fraud, public policy in the Contracting State where enforcement is sought, and inconsistency with other judgments. The Judgments Convention also sets out various procedural pre-conditions to enforcement.

**Entry into force and transitional provisions:** The Judgments Convention contains reasonably complex provisions as to its entry into force. In summary, however:

- > The trigger for it to enter into force for the first time will be the deposit of an instrument of ratification/acceptance by the second state to do so. It will then enter into force between the two relevant states on the first day of the month following the expiration of a 12 month period in which the first state has the option of deciding that the Judgments Convention shall not establish relations with the second (the second state has an equivalent right, but which it can only exercise upon the deposit of its instrument of ratification/acceptance).
- > The entry into force of the Judgments Convention in respect of subsequent states which ratify/accept it will follow a similar process (with every Contracting State having an individual right to decide within a 12-month period thereafter that the Judgments Convention will not apply as between it and the joining state); and
- > In order for it to apply to a particular set of proceedings, the Judgment Convention's transitional provisions require the proceedings to have been instituted at a time when the Judgments Convention had effect between the Contracting State of origin and the Contracting State in which the judgment is then sought to be enforced.

**Other matters:** The Judgments Convention also contains further, detailed, provisions regarding matters such as other declarations that Contracting States may make as to its application, its operation in respect of non-unified legal systems, its relationship with other international instruments, and its relationship with rules of Regional Economic Integration Organisations (such as the EU).

## Comment and conclusion

The finalisation of the Judgments Convention is a significant development, and there is likely to be ongoing interest in monitoring its progress (for example, it is in instrument which might, in the future, acquire some relevance in the context of post-Brexit relations between the UK and EU).

In practical terms, however, it is important to understand that all that has happened for now is that there is a text which states can choose to ratify/accept if they so wish. It is only once that happens, and the Judgments Convention enters into force between relevant states after the requisite period, that parties can potentially consider relying upon it. In practice, that may be some time away. Even then, of course, the Judgments Convention will only be of relevance to the recognition and enforcement of judgments as between Contracting States in respect of which it is in force, and which have not opted-out of its application as between each other (as outlined above).

The final text of the Judgments Convention is available on the HCCH's website [here](#).

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

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